

SENATE BILL 439

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SB 182/03 - FIN

2004 Regular Session
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By: **Senator Kelley**
Introduced and read first time: February 5, 2004
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Insurance - Viatical Settlement Providers and Viatical Settlement Brokers**

3 FOR the purpose of requiring viatical settlement providers and viatical settlement
4 brokers to register with the Maryland Insurance Commissioner under certain
5 circumstances; providing that this Act applies only to certain contracts between
6 viators and viatical settlement providers; establishing certain registration
7 requirements; requiring viatical settlement providers and viatical settlement
8 brokers to make certain disclosures in a certain manner to viators under certain
9 circumstances; providing for renewal of registrations; authorizing the
10 Commissioner to deny a registration to an applicant or refuse to renew, suspend,
11 or revoke a registration under certain circumstances; authorizing the
12 Commissioner to impose a certain penalty or require restitution under certain
13 circumstances; establishing certain violations of this Act; allowing viatical
14 settlement providers and viatical settlement brokers transacting business in
15 this State on the effective date of this Act to continue to transact business in this
16 State without being registered until a certain time under certain circumstances;
17 defining certain terms; requiring the Maryland Insurance Administration to
18 report to certain committees of the General Assembly at a certain time; and
19 generally relating to viatical settlement providers and viatical settlement
20 brokers under insurance.

21 BY adding to
22 Article - Insurance
23 Section 8-601 through 8-610, inclusive, to be under the new subtitle "Subtitle 6.
24 Viatical Settlement Providers and Viatical Settlement Brokers"
25 Annotated Code of Maryland
26 (2003 Replacement Volume)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
28 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Insurance**2 SUBTITLE 6. VIATICAL SETTLEMENT PROVIDERS AND VIATICAL SETTLEMENT
3 BROKERS.

4 8-601.

5 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.7 (B) "ACTIVITIES OF DAILY LIVING" INCLUDES BATHING, CONTINENCE,
8 DRESSING, EATING, TOILETING, AND TRANSFERRING.

9 (C) "CHRONICALLY ILL" MEANS THAT AN INDIVIDUAL:

10 (1) IS UNABLE TO PERFORM AT LEAST TWO ACTIVITIES OF DAILY
11 LIVING;12 (2) REQUIRES SUBSTANTIAL SUPERVISION TO PROTECT THE
13 INDIVIDUAL FROM THREATS TO HEALTH AND SAFETY DUE TO SEVERE COGNITIVE
14 IMPAIRMENT; OR15 (3) HAS A LEVEL OF DISABILITY SIMILAR TO THAT DESCRIBED IN ITEM
16 (1) OF THIS SUBSECTION.17 (D) "CREDIT ENHANCER" INCLUDES AN AUTHORIZED INSURER THAT
18 PROVIDES TO A VIATICAL SETTLEMENT PROVIDER STOP LOSS COVERAGE, AN
19 ANNUITY POLICY, AN INSURANCE POLICY, OR SIMILAR COVERAGE.

20 (E) "FINANCING ENTITY" MEANS A PERSON:

21 (1) THAT IS AN UNDERWRITER, A PLACEMENT AGENT, A LENDER, A
22 PURCHASER OF SECURITIES, A PURCHASER OF A POLICY OR CERTIFICATE FROM A
23 VIATICAL SETTLEMENT PROVIDER, A CREDIT ENHANCER, OR AN ENTITY THAT HAS A
24 DIRECT OWNERSHIP INTEREST IN A POLICY OR CERTIFICATE THAT IS THE SUBJECT
25 OF A VIATICAL SETTLEMENT CONTRACT; AND26 (2) (I) WHOSE PRINCIPAL ACTIVITY RELATED TO THE TRANSACTION
27 IS PROVIDING FUNDS TO EFFECT THE VIATICAL SETTLEMENT OR PURCHASE OF ONE
28 OR MORE VIATICATED POLICIES;29 (II) THAT HAS AN AGREEMENT IN WRITING WITH ONE OR MORE
30 REGISTERED VIATICAL SETTLEMENT PROVIDERS TO FINANCE THE ACQUISITION OF
31 VIATICAL SETTLEMENT CONTRACTS; OR32 (III) THAT IS A QUALIFIED INSTITUTIONAL BUYER, AS THAT TERM IS
33 DEFINED IN RULE 144A OF THE FEDERAL SECURITIES ACT OF 1933.34 (F) "POLICY" MEANS AN INDIVIDUAL OR GROUP POLICY, GROUP CERTIFICATE,
35 CONTRACT, OR ARRANGEMENT OF LIFE INSURANCE THAT AFFECTS THE RIGHTS OF A

1 RESIDENT OF THE STATE OR THAT BEARS A REASONABLE RELATION TO THE STATE,
2 REGARDLESS OF WHETHER DELIVERED OR ISSUED FOR DELIVERY IN THE STATE.

3 (G) "RELATED PROVIDER TRUST" MEANS A TITLING TRUST OR OTHER TRUST
4 THAT:

5 (1) IS ESTABLISHED BY A REGISTERED VIATICAL SETTLEMENT
6 PROVIDER OR A FINANCING ENTITY FOR THE SOLE PURPOSE OF HOLDING THE
7 OWNERSHIP OR BENEFICIAL INTEREST IN PURCHASED POLICIES IN CONNECTION
8 WITH A FINANCING TRANSACTION; AND

9 (2) HAS A WRITTEN AGREEMENT WITH THE REGISTERED VIATICAL
10 SETTLEMENT PROVIDER UNDER WHICH:

11 (I) THE VIATICAL SETTLEMENT PROVIDER IS RESPONSIBLE FOR
12 ENSURING COMPLIANCE WITH ALL STATUTORY AND REGULATORY REQUIREMENTS;
13 AND

14 (II) THE TRUST AGREES TO MAKE ALL RECORDS AND FILES
15 RELATED TO VIATICAL SETTLEMENT TRANSACTIONS AVAILABLE TO THE
16 COMMISSIONER AS IF THOSE RECORDS AND FILES WERE MAINTAINED DIRECTLY BY
17 THE REGISTERED VIATICAL SETTLEMENT PROVIDER.

18 (H) "SPECIAL PURPOSE ENTITY" MEANS A CORPORATION, PARTNERSHIP,
19 TRUST, LIMITED LIABILITY COMPANY, OR OTHER SIMILAR ENTITY FORMED SOLELY
20 TO PROVIDE, EITHER DIRECTLY OR INDIRECTLY, ACCESS TO INSTITUTIONAL CAPITAL
21 MARKETS FOR A FINANCING ENTITY OR A REGISTERED VIATICAL SETTLEMENT
22 PROVIDER.

23 (I) "TERMINALLY ILL" MEANS THAT AN INDIVIDUAL HAS AN ILLNESS OR
24 SICKNESS THAT CAN REASONABLY BE EXPECTED TO RESULT IN DEATH IN 24
25 MONTHS OR LESS.

26 (J) (1) "VIATICAL SETTLEMENT BROKER" MEANS A PERSON THAT ON
27 BEHALF OF A VIATOR AND FOR A FEE, COMMISSION, OR OTHER VALUABLE
28 CONSIDERATION OFFERS OR ATTEMPTS TO NEGOTIATE VIATICAL SETTLEMENT
29 CONTRACTS BETWEEN A VIATOR AND ONE OR MORE VIATICAL SETTLEMENT
30 PROVIDERS.

31 (2) "VIATICAL SETTLEMENT BROKER" DOES NOT INCLUDE:

32 (I) AN ATTORNEY, CERTIFIED PUBLIC ACCOUNTANT, OR
33 FINANCIAL PLANNER ACCREDITED BY A NATIONALLY RECOGNIZED ACCREDITATION
34 AGENCY, WHO IS RETAINED TO REPRESENT THE VIATOR AND WHOSE
35 COMPENSATION IS NOT PAID DIRECTLY OR INDIRECTLY BY THE VIATICAL
36 SETTLEMENT PROVIDER; OR

37 (II) AN INDIVIDUAL WHO, ON BEHALF OF A VIATOR AND FOR A FEE,
38 COMMISSION, OR OTHER VALUABLE CONSIDERATION, OFFERS OR ATTEMPTS TO
39 NEGOTIATE NO MORE THAN ONE VIATICAL SETTLEMENT CONTRACT BETWEEN A

1 VIATOR AND ONE OR MORE VIATICAL SETTLEMENT PROVIDERS IN A CALENDAR
2 YEAR.

3 (K) (1) "VIATICAL SETTLEMENT CONTRACT" MEANS A WRITTEN
4 AGREEMENT THAT ESTABLISHES THE TERMS UNDER WHICH COMPENSATION OR
5 ANYTHING OF VALUE WILL BE PAID, WHICH COMPENSATION OR VALUE IS LESS
6 THAN THE EXPECTED DEATH BENEFIT OF THE POLICY, IN RETURN FOR THE
7 VIATOR'S ASSIGNMENT, TRANSFER, SALE, DEVISE, OR BEQUEST OF THE DEATH
8 BENEFIT OR OWNERSHIP OF ANY PART OF THE POLICY.

9 (2) "VIATICAL SETTLEMENT CONTRACT" INCLUDES:

10 (I) A CONTRACT FOR A LOAN OR OTHER FINANCING TRANSACTION
11 WITH A VIATOR SECURED PRIMARILY BY A POLICY, OTHER THAN A LOAN BY A LIFE
12 INSURER UNDER THE TERMS OF THE POLICY OR A LOAN SECURED BY THE CASH
13 VALUE OF A POLICY; AND

14 (II) AN AGREEMENT WITH A VIATOR TO TRANSFER OWNERSHIP OR
15 CHANGE THE BENEFICIARY DESIGNATION AT A LATER DATE REGARDLESS OF THE
16 DATE THAT COMPENSATION IS PAID TO THE VIATOR.

17 (3) "VIATICAL SETTLEMENT CONTRACT" DOES NOT INCLUDE A
18 CONTRACT ENTERED INTO OR EFFECTUATED BETWEEN A VIATICAL SETTLEMENT
19 PROVIDER AND A FINANCING ENTITY, A RELATED PROVIDER TRUST, OR A SPECIAL
20 PURPOSE ENTITY.

21 (L) (1) "VIATICAL SETTLEMENT PROVIDER" MEANS A PERSON, OTHER THAN
22 A VIATOR, THAT ENTERS INTO OR EFFECTUATES A VIATICAL SETTLEMENT
23 CONTRACT.

24 (2) "VIATICAL SETTLEMENT PROVIDER" DOES NOT INCLUDE AN
25 INDIVIDUAL WHO ENTERS INTO OR EFFECTUATES NO MORE THAN ONE AGREEMENT
26 IN A CALENDAR YEAR FOR THE TRANSFER OF POLICIES FOR ANY VALUE LESS THAN
27 THE EXPECTED DEATH BENEFIT.

28 (M) "VIATICATED POLICY" MEANS A POLICY THAT HAS BEEN ACQUIRED BY A
29 VIATICAL SETTLEMENT PROVIDER UNDER A VIATICAL SETTLEMENT CONTRACT.

30 (N) (1) "VIATOR" MEANS THE OWNER OR CERTIFICATE HOLDER OF A POLICY
31 WHO ENTERS OR SEEKS TO ENTER INTO A VIATICAL SETTLEMENT CONTRACT.

32 (2) "VIATOR" DOES NOT INCLUDE AN ACCREDITED INVESTOR OR
33 QUALIFIED INSTITUTIONAL BUYER, AS DEFINED IN REGULATION D, RULE 501, OR
34 RULE 144A OF THE FEDERAL SECURITIES ACT OF 1933.

35 8-602.

36 THIS SUBTITLE APPLIES ONLY TO A VIATICAL SETTLEMENT CONTRACT
37 BETWEEN A VIATOR AND A VIATICAL SETTLEMENT PROVIDER.

1 8-603.

2 (A) A PERSON MUST REGISTER WITH THE COMMISSIONER BEFORE THE
3 PERSON ACTS AS OR REPRESENTS ITSELF AS A VIATICAL SETTLEMENT PROVIDER OR
4 VIATICAL SETTLEMENT BROKER IN THE STATE.

5 (B) EMPLOYEES AND AGENTS OF A REGISTERED VIATICAL SETTLEMENT
6 PROVIDER OR A REGISTERED VIATICAL SETTLEMENT BROKER MAY NOT BE
7 REQUIRED TO BE SEPARATELY REGISTERED EXCEPT IN ACCORDANCE WITH
8 REGULATIONS ADOPTED BY THE COMMISSIONER.

9 8-604.

10 AN APPLICANT FOR REGISTRATION SHALL:

11 (1) FILE WITH THE COMMISSIONER AN APPLICATION ON THE FORM
12 THAT THE COMMISSIONER REQUIRES; AND

13 (2) PAY TO THE COMMISSIONER A REGISTRATION FEE SET BY THE
14 COMMISSIONER.

15 8-605.

16 (A) NOTWITHSTANDING THE MANNER IN WHICH THE VIATICAL SETTLEMENT
17 BROKER IS COMPENSATED, A VIATICAL SETTLEMENT BROKER IS DEEMED TO
18 REPRESENT ONLY THE VIATOR AND OWES A FIDUCIARY DUTY TO THE VIATOR TO
19 ACT ACCORDING TO THE VIATOR'S INSTRUCTIONS AND IN THE BEST INTEREST OF
20 THE VIATOR.

21 (B) FOR PURPOSES OF THIS SUBTITLE, A VIATOR MAY NOT BE LIMITED TO AN
22 OWNER OR CERTIFICATE HOLDER OF A POLICY THAT INSURES THE LIFE OF AN
23 INDIVIDUAL WITH A TERMINAL OR CHRONIC ILLNESS OR CONDITION.

24 8-606.

25 (A) BEFORE AN OFFER TO PURCHASE A POLICY CAN BE MADE TO A VIATOR, A
26 VIATICAL SETTLEMENT PROVIDER SHALL:

27 (1) PROVIDE THE VIATOR WITH A DISCLOSURE STATEMENT THAT:

28 (I) CONTAINS THE DISCLOSURES REQUIRED IN SUBSECTIONS (B)
29 AND (C) OF THIS SECTION; AND

30 (II) HAS BEEN SIGNED BY THE VIATICAL SETTLEMENT PROVIDER;
31 AND

32 (2) RECEIVE FROM THE VIATOR THE DISCLOSURE STATEMENT SIGNED
33 BY THE VIATOR.

1 (B) BEFORE AN OFFER TO PURCHASE A POLICY CAN BE MADE TO THE VIATOR,
2 A VIATICAL SETTLEMENT PROVIDER SHALL PROVIDE TO THE VIATOR A DISCLOSURE
3 STATEMENT THAT CONTAINS THE FOLLOWING DISCLOSURES:

4 (1) THERE ARE POSSIBLE ALTERNATIVES TO VIATICAL SETTLEMENT
5 CONTRACTS, INCLUDING ANY ACCELERATED DEATH BENEFITS OR POLICY LOANS
6 OFFERED UNDER THE VIATOR'S POLICY;

7 (2) SOME OR ALL OF THE PROCEEDS OF THE VIATICAL SETTLEMENT
8 MAY BE TAXABLE UNDER FEDERAL OR STATE INCOME TAX LAW, AND ASSISTANCE
9 SHOULD BE SOUGHT FROM A PROFESSIONAL TAX ADVISER;

10 (3) PROCEEDS OF THE VIATICAL SETTLEMENT COULD BE SUBJECT TO
11 THE CLAIMS OF CREDITORS;

12 (4) RECEIPT OF THE PROCEEDS OF A VIATICAL SETTLEMENT MAY
13 ADVERSELY AFFECT THE VIATOR'S ELIGIBILITY FOR MEDICAID OR OTHER
14 GOVERNMENT BENEFITS OR ENTITLEMENTS, AND ADVICE SHOULD BE OBTAINED
15 FROM THE APPROPRIATE GOVERNMENT AGENCIES;

16 (5) (I) THE VIATOR HAS THE RIGHT TO RESCIND A VIATICAL
17 SETTLEMENT CONTRACT FOR 15 CALENDAR DAYS AFTER RECEIPT OF THE VIATICAL
18 SETTLEMENT PROCEEDS BY THE VIATOR, SUBJECT TO REPAYMENT OF ALL VIATICAL
19 SETTLEMENT PROCEEDS AND ANY PREMIUMS AND LOAN INTEREST PAID BY THE
20 VIATICAL SETTLEMENT PROVIDER; AND

21 (II) IF THE INSURED DIES DURING THE RESCISSION PERIOD, THE
22 VIATICAL SETTLEMENT CONTRACT SHALL BE DEEMED TO HAVE BEEN RESCINDED,
23 SUBJECT TO REPAYMENT OF ALL VIATICAL SETTLEMENT PROCEEDS AND ANY
24 PREMIUMS, LOANS, AND LOAN INTEREST TO THE VIATICAL SETTLEMENT PROVIDER;

25 (6) FUNDS WILL BE SENT TO THE VIATOR WITHIN 3 BUSINESS DAYS
26 AFTER THE VIATICAL SETTLEMENT PROVIDER HAS RECEIVED THE INSURER'S OR
27 GROUP ADMINISTRATOR'S ACKNOWLEDGMENT THAT OWNERSHIP OF OR INTEREST
28 IN THE POLICY HAS BEEN TRANSFERRED AND THE BENEFICIARY HAS BEEN
29 DESIGNATED;

30 (7) ENTERING INTO A VIATICAL SETTLEMENT CONTRACT MAY CAUSE
31 OTHER RIGHTS OR BENEFITS, INCLUDING CONVERSION RIGHTS AND WAIVER OF
32 PREMIUM BENEFITS THAT MAY EXIST UNDER THE POLICY, TO BE FORFEITED BY THE
33 VIATOR, AND ASSISTANCE SHOULD BE SOUGHT FROM A FINANCIAL ADVISER; AND

34 (8) (I) THE INSURED MAY BE CONTACTED BY EITHER THE VIATICAL
35 SETTLEMENT PROVIDER OR THE VIATICAL SETTLEMENT BROKER OR ITS
36 AUTHORIZED REPRESENTATIVE FOR THE PURPOSE OF DETERMINING THE
37 INSURED'S HEALTH STATUS; AND

38 (II) THIS CONTACT IS LIMITED TO:

1 1. ONCE EVERY 3 MONTHS IF THE INSURED HAS A LIFE
2 EXPECTANCY OF MORE THAN 1 YEAR; AND

3 2. NOT MORE THAN ONCE PER MONTH IF THE INSURED HAS
4 A LIFE EXPECTANCY OF 1 YEAR OR LESS.

5 (C) (1) DISCLOSURE TO A VIATOR ALSO SHALL INCLUDE DISTRIBUTION OF A
6 BROCHURE THAT DESCRIBES THE PROCESS OF VIATICAL SETTLEMENTS.

7 (2) THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
8 FORM FOR THE BROCHURE SHALL BE USED UNLESS A BROCHURE IS DEVELOPED BY:

9 (I) THE COMMISSIONER; OR

10 (II) A VIATICAL SETTLEMENT BROKER OR VIATICAL SETTLEMENT
11 PROVIDER THAT IS APPROVED BY THE COMMISSIONER.

12 (D) THE DISCLOSURE DOCUMENT SHALL CONTAIN THE FOLLOWING
13 LANGUAGE: "ALL MEDICAL, FINANCIAL, OR PERSONAL INFORMATION SOLICITED OR
14 OBTAINED BY A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT
15 BROKER ABOUT AN INSURED, INCLUDING THE INSURED'S IDENTITY OR THE
16 IDENTITY OF FAMILY MEMBERS, A SPOUSE, OR A SIGNIFICANT OTHER MAY BE
17 DISCLOSED AS NECESSARY TO EFFECT THE VIATICAL SETTLEMENT BETWEEN THE
18 VIATOR AND THE VIATICAL SETTLEMENT PROVIDER. IF YOU ARE ASKED TO PROVIDE
19 THIS INFORMATION, YOU WILL BE ASKED TO CONSENT TO THE DISCLOSURE. THE
20 INFORMATION MAY BE PROVIDED TO SOMEONE WHO BUYS THE POLICY OR
21 PROVIDES FUNDS FOR THE PURCHASE. YOU MAY BE ASKED TO RENEW YOUR
22 PERMISSION TO SHARE INFORMATION EVERY 2 YEARS."

23 (E) A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT BROKER
24 SHALL PROVIDE THE VIATOR WITH A COPY OF THE DISCLOSURE STATEMENT SIGNED
25 BY THE VIATOR AND THE VIATICAL SETTLEMENT PROVIDER OR VIATICAL
26 SETTLEMENT BROKER, AT THE TIME THAT AN APPLICATION FOR A VIATICAL
27 SETTLEMENT CONTRACT IS PROVIDED TO THE VIATOR.

28 (F) (1) A VIATICAL SETTLEMENT PROVIDER SHALL PROVIDE THE VIATOR
29 WITH AT LEAST THE DISCLOSURES REQUIRED BY THIS SUBSECTION NO LATER THAN
30 THE DATE THAT THE VIATICAL SETTLEMENT CONTRACT IS SIGNED BY ALL PARTIES.

31 (2) THE DISCLOSURES SHALL BE CONSPICUOUSLY DISPLAYED IN THE
32 VIATICAL SETTLEMENT CONTRACT OR IN A SEPARATE DOCUMENT SIGNED BY THE
33 VIATOR AND THE VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT
34 BROKER.

35 (3) THE DISCLOSURES REQUIRED UNDER THIS SUBSECTION SHALL
36 PROVIDE THE FOLLOWING INFORMATION:

37 (I) A STATEMENT OF THE AFFILIATION, IF ANY, BETWEEN THE
38 VIATICAL SETTLEMENT BROKER, VIATICAL SETTLEMENT PROVIDER, AND THE
39 INSURER THAT ISSUED THE POLICY TO BE VIATICATED;

1 (II) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
2 VIATICAL SETTLEMENT PROVIDER;

3 (III) A DISCLOSURE BY THE VIATICAL SETTLEMENT BROKER OF THE
4 AMOUNT AND METHOD OF CALCULATING THE VIATICAL SETTLEMENT BROKER'S
5 COMPENSATION, INCLUDING ANYTHING OF VALUE PAID OR GIVEN TO A VIATICAL
6 SETTLEMENT BROKER FOR THE PLACEMENT OF A POLICY;

7 (IV) IF THE POLICY TO BE VIATICATED HAS BEEN ISSUED AS A
8 JOINT POLICY OR INVOLVES FAMILY RIDERS OR ANY COVERAGE OF A LIFE OTHER
9 THAN THE INSURED UNDER THE POLICY TO BE VIATICATED, THE VIATOR SHALL BE
10 INFORMED OF THE POSSIBLE LOSS OF COVERAGE ON THE OTHER LIVES UNDER THE
11 POLICY AND SHALL BE ADVISED TO CONSULT WITH AN INSURANCE PRODUCER OR
12 THE INSURER ISSUING THE POLICY FOR ADVICE ON THE PROPOSED VIATICAL
13 SETTLEMENT;

14 (V) 1. THE DOLLAR AMOUNT OF THE CURRENT DEATH BENEFIT
15 PAYABLE TO THE VIATICAL SETTLEMENT PROVIDER UNDER THE POLICY; AND

16 2. IF KNOWN, THE AVAILABILITY OF ANY ADDITIONAL
17 GUARANTEED INSURANCE BENEFITS, THE DOLLAR AMOUNT OF ANY ACCIDENTAL
18 DEATH AND DISMEMBERMENT BENEFITS UNDER THE POLICY, AND THE VIATICAL
19 SETTLEMENT PROVIDER'S INTEREST IN THOSE BENEFITS; AND

20 (VI) 1. THE NAME, BUSINESS ADDRESS, AND TELEPHONE
21 NUMBER OF THE INDEPENDENT THIRD PARTY ESCROW AGENT; AND

22 2. THE FACT THAT THE VIATOR OR OWNER MAY INSPECT OR
23 RECEIVE COPIES OF THE RELEVANT ESCROW OR TRUST AGREEMENTS OR
24 DOCUMENTS.

25 (G) IF THE VIATICAL SETTLEMENT PROVIDER TRANSFERS OWNERSHIP OR
26 CHANGES THE BENEFICIARY OF THE POLICY, THE VIATICAL SETTLEMENT PROVIDER
27 SHALL COMMUNICATE THE CHANGE IN OWNERSHIP OR BENEFICIARY TO THE
28 INSURED WITHIN 20 DAYS AFTER THE CHANGE.

29 8-607.

30 (A) A REGISTRATION EXPIRES AT THE END OF EVERY OTHER YEAR ON THE
31 ANNIVERSARY OF THE REGISTRATION UNLESS IT IS RENEWED AS PROVIDED IN THIS
32 SECTION.

33 (B) BEFORE A REGISTRATION EXPIRES, THE REGISTRANT MAY RENEW IT FOR
34 AN ADDITIONAL 2-YEAR TERM, IF THE REGISTRANT:

35 (1) OTHERWISE IS ENTITLED TO BE REGISTERED;

36 (2) FILES WITH THE COMMISSIONER A RENEWAL APPLICATION ON THE
37 FORM THAT THE COMMISSIONER REQUIRES; AND

1 (3) PAYS TO THE COMMISSIONER A RENEWAL FEE OF \$50.

2 (C) AN APPLICATION FOR RENEWAL OF A REGISTRATION SHALL BE
3 CONSIDERED MADE IN A TIMELY MANNER IF IT IS POSTMARKED ON OR BEFORE THE
4 ANNIVERSARY DATE OF THE REGISTRATION OF THE YEAR OF RENEWAL.

5 8-608.

6 SUBJECT TO THE HEARING PROVISIONS OF TITLE 2 OF THIS ARTICLE, THE
7 COMMISSIONER MAY DENY A REGISTRATION TO AN APPLICANT OR REFUSE TO
8 RENEW, SUSPEND, OR REVOKE THE REGISTRATION OF A REGISTRANT IF THE
9 APPLICANT OR REGISTRANT:

10 (1) KNOWINGLY MAKES A MATERIAL MISSTATEMENT IN AN
11 APPLICATION FOR REGISTRATION;

12 (2) FRAUDULENTLY OR DECEPTIVELY OBTAINS OR ATTEMPTS TO
13 OBTAIN A REGISTRATION FOR THE APPLICANT OR REGISTRANT OR FOR ANOTHER;

14 (3) HAS BEEN CONVICTED OF A FELONY OR OF A MISDEMEANOR
15 INVOLVING MORAL TURPITUDE;

16 (4) IN CONNECTION WITH THE VIATICAL SETTLEMENT CONTRACT AND
17 RELATED INSURANCE APPLICATION, COMMITS FRAUD OR ENGAGES IN ILLEGAL OR
18 DISHONEST ACTIVITIES;

19 (5) OTHERWISE HAS SHOWN A LACK OF TRUSTWORTHINESS OR
20 COMPETENCE TO ACT AS A VIATICAL SETTLEMENT BROKER OR VIATICAL
21 SETTLEMENT PROVIDER; OR

22 (6) VIOLATES ANY PROVISION OF THIS SUBTITLE OR A REGULATION
23 ADOPTED UNDER IT.

24 8-609.

25 INSTEAD OF OR IN ADDITION TO SUSPENDING OR REVOKING A REGISTRATION,
26 THE COMMISSIONER MAY:

27 (1) IMPOSE ON THE HOLDER A PENALTY NOT EXCEEDING \$125,000 FOR
28 EACH VIOLATION OF THIS SUBTITLE; AND

29 (2) REQUIRE THE HOLDER TO MAKE RESTITUTION TO ANY PERSON
30 THAT HAS SUFFERED FINANCIAL INJURY BECAUSE OF THE VIOLATION OF THIS
31 SUBTITLE.

32 8-610.

33 (A) IT IS A VIOLATION OF THIS SUBTITLE FOR A VIATICAL SETTLEMENT
34 BROKER OR VIATICAL SETTLEMENT PROVIDER TO:

1 (1) VIOLATE ANY PROVISION OF THIS SUBTITLE OR ANY REGULATION
2 ADOPTED UNDER THIS SUBTITLE;

3 (2) FAIL TO REGISTER WITH THE COMMISSIONER IN ACCORDANCE WITH
4 THIS SUBTITLE BEFORE ACTING OR REPRESENTING ITSELF AS A VIATICAL
5 SETTLEMENT BROKER OR VIATICAL SETTLEMENT PROVIDER;

6 (3) FAIL TO PROVIDE A VIATOR WITH A DISCLOSURE STATEMENT IN
7 ACCORDANCE WITH THIS SUBTITLE;

8 (4) FAIL TO ALLOW A VIATOR TO RESCIND A VIATICAL SETTLEMENT
9 CONTRACT UP TO AT LEAST 15 CALENDAR DAYS AFTER THE RECEIPT OF THE
10 VIATICAL SETTLEMENT PROCEEDS BY THE VIATOR; AND

11 (5) FAIL TO DELIVER TO A VIATOR THE VIATICAL SETTLEMENT
12 PROCEEDS IN ACCORDANCE WITH THIS SUBTITLE.

13 (B) IT IS A VIOLATION OF THIS SUBTITLE FOR A PERSON TO ENTER INTO A
14 VIATICAL SETTLEMENT CONTRACT WITHIN A 2-YEAR PERIOD COMMENCING WITH
15 THE DATE OF ISSUANCE OF THE INSURANCE POLICY TO BE ACQUIRED UNDER THE
16 VIATICAL SETTLEMENT CONTRACT UNLESS:

17 (1) THE VIATOR CERTIFIES TO THE VIATICAL SETTLEMENT PROVIDER
18 THAT WITHIN THE 2-YEAR PERIOD:

19 (I) THE POLICY WAS ISSUED ON THE VIATOR'S EXERCISE OF
20 CONVERSION RIGHTS ARISING OUT OF A GROUP OR INDIVIDUAL POLICY;

21 (II) THE TOTAL TIME COVERED UNDER THE CONVERSION POLICY
22 AND THE PRIOR POLICY IS AT LEAST 24 MONTHS;

23 (III) THE TIME COVERED UNDER THE GROUP POLICY IS
24 CALCULATED WITHOUT REGARD TO ANY CHANGE IN INSURANCE CARRIERS; AND

25 (IV) THE COVERAGE UNDER THE GROUP POLICY HAS BEEN
26 CONTINUOUS AND UNDER THE SAME GROUP SPONSORSHIP; OR

27 (2) THE VIATOR SUBMITS INDEPENDENT EVIDENCE TO THE VIATICAL
28 SETTLEMENT PROVIDER THAT WITHIN THE 2-YEAR PERIOD THE INSURED BECAME
29 TERMINALLY OR CHRONICALLY ILL; OR

30 (3) THE VIATOR SUBMITS INDEPENDENT EVIDENCE TO THE VIATICAL
31 SETTLEMENT PROVIDER THAT WITHIN THE 2-YEAR PERIOD THE VIATOR OR INSURED
32 DISPOSED OF OWNERSHIP INTERESTS IN A CLOSELY HELD CORPORATION.

33 (C) ANY COPIES OF CERTIFICATION OR INDEPENDENT EVIDENCE REQUIRED
34 UNDER SUBSECTION (B) OF THIS SECTION SHALL BE:

1 (1) SUBMITTED TO THE INSURER WHEN THE VIATICAL SETTLEMENT
2 PROVIDER SUBMITS A REQUEST TO THE INSURER FOR VERIFICATION OF COVERAGE;
3 AND

4 (2) ACCOMPANIED BY A LETTER OF ATTESTATION FROM THE VIATICAL
5 SETTLEMENT PROVIDER THAT THE COPIES OF CERTIFICATION OR INDEPENDENT
6 EVIDENCE REQUIRED UNDER SUBSECTION (B) OF THIS SECTION ARE TRUE AND
7 CORRECT COPIES OF THE DOCUMENTS RECEIVED BY THE VIATICAL SETTLEMENT
8 PROVIDER.

9 SECTION 2. AND BE IT FURTHER ENACTED, That nothing in this Act shall
10 affect the jurisdiction of the Securities Commissioner of the Office of the Attorney
11 General of Maryland.

12 SECTION 3. AND BE IT FURTHER ENACTED, That, in the absence of an
13 order by the Maryland Insurance Commissioner to the contrary, a viatical settlement
14 provider or a viatical settlement broker transacting business in this State on the
15 effective date of this Act may continue to transact business in this State without being
16 registered, as required under Section 1 of this Act, until the Commissioner approves
17 or disapproves the viatical settlement provider's or viatical settlement broker's
18 application for registration if:

19 (a) the viatical settlement provider or viatical settlement broker applies for
20 registration no later than 30 days after the date the Commissioner makes available
21 viatical settlement provider registration applications or viatical settlement broker
22 registration applications; and

23 (b) the viatical settlement provider or viatical settlement broker complies with
24 all other provisions of this Act.

25 SECTION 4. AND BE IT FURTHER ENACTED, That the Maryland
26 Insurance Administration shall report, in accordance with § 2-1246 of the State
27 Government Article, to the Senate Finance Committee and the House Economic
28 Matters Committee 1 year after the date the Maryland Insurance Commissioner
29 makes available viatical settlement provider registration applications and viatical
30 settlement broker registration applications on whether:

31 (a) the registration fee under § 8-604 of the Insurance Article, as enacted by
32 Section 1 of this Act, is adequate to cover the cost incurred by the Administration for
33 the regulation of viatical settlement brokers and viatical settlement providers; and

34 (b) any change to the registration fee is appropriate.

35 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take
36 effect October 1, 2004.